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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,006	09/25/2003	Jonathan A. Eppstein	19141.0023U2	4535

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NEEDLE & ROSENBERG, P.C.  
SUITE 1000  
999 PEACHTREE STREET  
ATLANTA, GA 30309-3915

EXAMINER

ROBINSON, DANIEL LEON

ART UNIT PAPER NUMBER

3742

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/671,006

Applicant(s)

EPPSTEIN ET AL.

Examiner

Daniel I. Robinson

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38, 41-50 is/are rejected.
- 7) ☐ Claim(s) 39, 40 and 51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for the recitation “said opening” in line 2.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1, 7, 12, 13, 23, 31, and 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Caro(U.S.Pat.5,348,003).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 14-22, 35-38, 41, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of McLanson et al.(U.S.Pat.5,800,373). Caro discloses a method and apparatus for chemical analysis of blood for glucose measurement that shows many of the features of the claimed invention but fails to show explicitly that an adhesive or a dye or a primer is used. McLanson discloses an initiator priming for improved adherence of gels to substrates that shows explicitly using an adhesive, a dye and a primer. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a primer and an adhesive as taught by McLanson with a dye because the primer and adhesive increase adherence and the dye serves to make the photosensitizing material noticeable.

Claims 6, 10, 11, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of Eppstein et al.(U.S.Pat.5,458,140). Caro does not show a meter-interface layer. Eppstein discloses an enhancement of transdermal monitoring applications with ultrasound and chemical enhancers that shows a meter-interface layer. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use an meter-interface layer as taught by Eppstein with the device of Caro so as to supply data to a user.

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Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of McLanson as applied to claims 2-5, 14-22, 36-38 and 41 above, and further in view of Cozzette et al.(U.S.Pat.5,063,081). Caro does not explicitly show a material from the group of (polyesters or polyimides or polyethylenes or polypropylenes or acrylic or cellulose). Cozzette discloses a method of manufacturing a plurality of uniform microfabricated sensing devices having an immobilized ligand receptor that shows using a film material made of cellulose. It would have been obvious to one of ordinary skill to incorporate the cellulose of Cozzette in the device of Caro in view of McLanson to allow for micro realization.

Claims 24-30, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of Eppstein et al.(U.S.Pat.5,885,211). Caro does not show a heated probe. Eppstein discloses a microporation of human skin for monitoring the concentration of an analyte that shows using a heated probe and using ultrasonic energy. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a heated probe, for ablation, and ultrasonic energy to because it is easily modulated.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of Chick et al.(U.S.Pat.6,040,194). Caro does not show a colorimetric sensor. Chick discloses a method and device for detecting and quantifying substances in body fluids that shows a colorimetric sensor. It would have been obvious to one of ordinary skill to incorporate into Caro a colorimetric sensor as taught by Chick to sense colorimetric reactions.

Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caro in view of McLanson as applied to claims 2-5, 14-22, 35-38, 41, 48 and 50 above, and further in view of McAleer et al.(U.S.Pat.5,708,247). The modified Caro reference does not show a wicking mesh. McAleer discloses a positioning structure for a glucose test assembly that shows a wicking mesh. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a mesh as taught by McAleer so as to guide the sample to a test location.

Claims 39, 40 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dlr

DANIEL ROBINSON  
PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'dlr', with a long horizontal flourish extending to the right.